



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0394; FRL-9977-84-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; Approval of an Alternative Volatile Organic Compound Emission Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State of Maryland's state implementation plan (SIP). Maryland requested that EPA incorporate by reference into the Maryland SIP a Maryland Department of the Environment (MDE) order establishing an alternative volatile organic compound (VOC) emission standard for National Gypsum Company (NGC) that will ensure that this source remains a minor stationary source of VOCs. EPA is approving the SIP submittal incorporating by reference MDE's order for NGC in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0394. All documents in the docket are listed on the [http:// www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, (215) 814 2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 2016, MDE submitted a formal revision to the Maryland SIP. The SIP revision consisted of a request to incorporate by reference a MDE departmental order establishing an alternative VOC emission standard for NGC in connection with the permit-to-construct conditions issued by MDE to ensure that it remains a minor stationary source of VOCs. The alternative VOC emissions limit is 195 pounds per operating day (lbs/day) with at least a 99% overall VOC control efficiency at Board Kiln No. 1.

NGC is a major stationary source of nitrogen oxides (NO_x), but is not a major stationary source for VOCs. NGC has two major manufacturing lines: Board Kiln No. 1 and Board Kiln No. 2. NGC was subject to VOC emission limits on its kilns in COMAR 26.11.06.06, which is included in the Maryland SIP. Since Board Kiln No. 1 was installed before May 12, 1972, COMAR 26.11.06.06B(1)(a) required its VOC emissions to be less than 200 lbs/day unless the discharge is reduced by 85 percent or more overall. Because Board Kiln No. 2 was installed in April 1998, it was subject to COMAR 26.11.06.06B(1)(b), which, except as provided in COMAR 26.11.06.06E, limited the discharge of VOC to not exceed 20 lbs/day unless the discharge is

reduced by 85 percent or more overall. Under COMAR 26.11.06.06E (“Exceptions”), a source may request an exception to a VOC emission limit from MDE if the source is not subject to new source review (NSR) and if the source is unable to comply with COMAR 26.11.06.06B (“Control of VOC from Installations”). COMAR 26.11.06.06E(5) requires MDE to submit the exception to EPA for inclusion in the Maryland SIP. MDE entered a consent order with NGC on March 11, 2016 establishing an alternative VOC emission limit for Board Kiln No. 1 and Board Kiln No. 2.

On August 28, 2017, EPA simultaneously published a notice of proposed rulemaking (NPR) (82 FR 40743) and a direct final rule (DFR) (82 FR 40715) approving Maryland’s June 2016 SIP revision submittal which requested incorporation by reference of a MDE order that includes an alternative VOC emission standard for NGC. EPA received an adverse comment on the rulemaking and withdrew the DFR prior to the effective date of November 27, 2017.

II. Summary of SIP Revision and EPA’s Analysis

In the June 24, 2016 SIP submittal, MDE included an order authorizing an alternative VOC emissions standard per COMAR 26.11.06.06E in connection with the construction permit MDE previously prepared for NGC. MDE requested that EPA incorporate by reference the order with the alternative VOC emissions standard into the Maryland SIP, as required by COMAR 26.11.06.06E(5). MDE had determined that NGC met requirements for the VOC alternative limit in COMAR 26.11.06.06E. One requirement in COMAR 26.11.06.06E(3)(c) is that the alternative VOC limit not interfere with reasonable progress. The MDE order for NGC requires that NGC comply with the following alternative VOC standards and other conditions: 1) NGC shall install a regenerative thermal oxidizer (RTO) on Board Kiln No. 1, which is designed to achieve at least a 99% overall VOC control efficiency, or not greater than 0.5 parts per million

by volume (ppmv) of VOC in the flue gases exiting the RTO; 2) total VOC emissions from Board Kiln No. 1 and Board Kiln No. 2, combined, shall not exceed 195 lbs/day; 3) total premises-wide VOC emissions shall be less than 25 tons in any rolling 12-month period to ensure that the total net VOC emissions increase resulting from the modification of Board Kiln No. 1, in addition to Board Kiln No. 2's emissions, is less than the nonattainment NSR threshold of 25 tons in any rolling 12-month period; 4) NGC shall vent the flue gases from Board Kiln No. 1 through the RTO prior to discharging to the atmosphere when manufacturing silicone XP water resistant wallboard and eXP water resistant wallboard; 5) the temperature of the combustion zone of the RTO shall be maintained to at least the minimum temperature established during the most recent stack emissions tests demonstrating compliance with the daily VOC emission limit of 195 pounds per operating day; 6) NGC shall manufacture regular wallboard (any wallboard that is not silicone XP water resistant wallboard or eXP water resistant wallboard and is not prohibited for production by MDE) only in Board Kiln No. 2; and 7) NGC shall monitor daily production for each type of wallboard and shall calculate total daily VOC emissions from Board Kiln No. 1 and Board Kiln No. 2 to demonstrate compliance with the alternative VOC emission standard of 195 pounds per operating day.

After evaluating the SIP revision, EPA finds that the submittal strengthens the State of Maryland's SIP and is in accordance with COMAR 26.11.06.06 (which is in the Maryland SIP and provides for VOC alternative limits). EPA also finds the submittal is in accordance with section 110 of the CAA, including 110(a) and 110(l), as the SIP revision will not interfere with reasonable further progress, attainment of any national ambient air quality standard (NAAQS), or any other applicable CAA requirements. The alternative VOC limit for NGC imposes a more stringent combined VOC emissions limit on both kilns of 195 lbs/day compared to 220 lbs/day

which would otherwise apply under COMAR 26.11.06.06 to the kilns. In addition to the lbs/day limit, NGC is subject to other limits EPA finds should restrict VOC emissions including installation of a RTO on Board Kiln No. 1 with 99% removal efficiency for VOCs and a limit on plant-wide VOCs of 25 tons per 12 month rolling period. Thus, EPA finds the more stringent VOC lbs/day limit plus other measures in the MDE Order should yield greater VOC emissions reductions from NGC's kilns than the generally applicable limit under the SIP.

III. Public Comments and EPA's Response

EPA received one public comment on the August 28, 2017 NPR (82 FR 40743) to approve Maryland's June 24, 2016 SIP submittal.

Comment: EPA should not grant an alternative limit that is so much more than the 20 lbs/day VOCs allowed in the State of Maryland. EPA should follow the rules already in place for cement kilns in Maryland and not let this facility create ten times more VOCs which create ozone in other states. EPA should conduct modeling to determine what effect the increased VOC emissions will have on downwind areas that cannot meet ozone standards. Additionally, EPA should determine whether or not the increase of VOC will result in increased ozone in the immediate areas as Baltimore has had several high ozone air quality days. The commenter stated EPA should not reduce health standards nor relax regulatory relief. Finally, the commenter cited health effects of ozone pollution and asked EPA to not let cement kilns pollute more.

Response: First, EPA notes that the VOC limits at the facility prior to this action were 20 lbs per day at Kiln #2 and 200 lbs per day at Kiln #1, for an overall total permitted limit of 220 lbs/day from both kilns. The new limit will be 195 lbs/day from both kilns combined, which is a 25 lb/day decrease in the overall permitted amount of VOCs allowed from both kilns. Thus, the

facility is not allowed to increase its VOC emissions tenfold, as commenter states. Second, the request is in accord with rules already in place in Maryland's SIP. Pursuant to the Maryland SIP, COMAR 26.11.06.06E ("Exceptions"), a source may request an exception to a VOC emission limit from MDE if the source is not subject to NSR and if the source is unable to comply with COMAR 26.11.06.06B. MDE concluded NGC was not subject to NSR and that NGC was unable to comply with COMAR 26.11.06.06B, making it eligible to apply for an exception under COMAR 26.11.06.06E. However, because exceptions under COMAR 26.11.06.06E require EPA approval of specific emission limitations, MDE submitted the alternative VOC limit to EPA for inclusion in the SIP. As described above and in the DFR, EPA finds the alternative limit permissible within the scope of COMAR 26.11.06.06E for an alternative VOC limit for NGC.

EPA notes that Maryland regulation COMAR 26.11.06.06B(1)(b), which establishes the 20 lbs/day VOC limit cited in the comment and is currently applicable to Board Kiln No. 2, itself provides that alternative limits can be appropriate in certain circumstances, even outside the exceptions available in COMAR 26.11.06.06E. Specifically, the Maryland regulation states that in addition to the exceptions provision, an alternative limit to the 20 lbs/day can be appropriate if "the discharge is reduced by 85 percent or more overall." Thus, on its face Maryland's existing, SIP-approved regulations explicitly contemplate deviation from the 20 lb/day VOC limit for Board Kiln No. 2 in certain circumstances. In addition, COMAR 26.11.06.06E provides further conditions under which the state may establish an alternative emission limit, subject to EPA approval.

In order to grant such an exception, COMAR 26.11.06.06E(3) requires the following:

(3) The Department may grant an exception to §B(1)(b) or B(2)(c) of this regulation if it determines that:

- (a) Control methods, if any, necessary to meet the requirements of §B(1)(b) or B(2)(c) are not reasonable for the installation;
- (b) The applicant has the ability to operate and maintain the equipment and has the production controls necessary to meet the alternative VOC emission standard established by the Department instead of the requirements of §B(1)(b) or B(2)(c); and
- (c) Emissions from the installation will not interfere with reasonable further progress if the exception is granted.

EPA finds that MDE has found that these criteria have been met, and included in the docket MDE's five-page Fact Sheet and Tentative Determination (Fact Sheet), which discusses each of the elements listed above. Section III of the Fact Sheet notes that the VOC content in the flue gases from Board Kiln No. 2 is not significant, and therefore add-on controls would not be cost-effective and that space constraints at Board Kiln No. 2 make it economically infeasible to install an RTO as a control method under COMAR 26.11.06.06E(3)(a) above. As to criterion (3)(b) above, MDE's Fact Sheet, Section V(1), requires that NGC conduct a compliance demonstration for the RTO installed on Kiln #1 within 180 days of start-up of the RTO, and also conduct stack tests on Kiln #2 to demonstrate compliance with the alternative emission rate, and thereafter monitor production rates from each kiln in order to calculate daily VOC emissions to demonstrate compliance with the 195 lbs/day limit. This is how MDE will determine that NGC has the ability to operate and maintain the equipment and has production controls needed to meet the alternative standard. Finally, regarding criterion (3)(c), Section V of the Fact Sheet (p.5) contains MDE's analysis of air quality, which states that installation of an RTO on Board Kiln No. 1 would significantly reduce the emissions of VOC. Furthermore, and relevant to commenter's concern, the analysis in Section V of the Fact Sheet states that although the

alternative VOC limit for Board Kiln No. 2 will increase above the 20 lbs/day currently permitted under Maryland regulation, the new combined VOC limits between Board Kiln No. 1 and Board Kiln No. 2 are in fact more stringent than the existing combined VOC limits for the two units, and thus that the proposed exception will be beneficial to the local economy and air quality.

In accordance with Section 110(l) of the CAA, when approving a revision to a SIP EPA is also required to ensure that the state SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of any other applicable requirement in the CAA. In this case, the combined 195 lbs/day VOC limit for both kilns, along with the requirement that the control device on Kiln No. 1 must meet a 99% VOC destruction efficiency, are together more stringent than the VOC limits otherwise presumptively applicable to NGC under COMAR 26.11.06.06, which total 220 lbs/day (200 lbs/day for kiln 1 and 20 lbs/day for kiln 2). EPA does not expect that this more stringent combined limit between the two kilns will result in interference with other CAA requirements, including attainment of or reasonable further progress towards any NAAQS.

In response to the commenter's concern that EPA should follow the rules already in place for cement kilns in Maryland and not let this facility create ten times more VOCs which create ozone in other states, EPA first notes that the NGC facility makes wallboard and is not a cement kiln. Second, the total allowable emissions of VOCs from the Kilns 1 and 2 are decreasing from 220 lbs/day to 195 lbs/day under this SIP revision, rather than increasing ten times.

The commenter also requested that EPA should conduct modeling to determine what effect the increased VOC emissions will have on downwind areas that cannot meet ozone standards. In the

same vein, the commenter requested that EPA should determine whether or not the increase of VOC will result in increased ozone in the immediate areas as Baltimore has had several high ozone air quality days. However, as stated above, this SIP revision decreases the allowable VOC emissions from the two kilns by lowering the overall permitted VOC emission limits from the two kilns from a presumptive total limit of 220 lbs/day to 195 lbs/day. This lower limit on VOC emissions from the kilns should not result in increased ozone in the Baltimore area. Regarding modelling, EPA is not aware of any provision of the CAA or Maryland SIP requiring MDE or EPA to conduct modeling in these circumstances to determine impacts on ozone NAAQS in downwind or nearby areas. The more stringent combined VOC limit of 195 lbs/day and the VOC reductions from the RTO on Kiln No. 1 should result in additional expected VOC reductions from NGC, and therefore the alternative VOC limit for NGC should not interfere with ozone NAAQS in downwind areas such as Baltimore nor allow more “pollution” from NGC.

Finally, EPA’s action here is approving an alternative VOC emission limit proposed by MDE which MDE determined is in accordance with requirements of the Maryland SIP. Our action is not “reducing health standards” nor relaxing “regulatory relief.” Indeed, the NAAQS for ozone, which is set at a level to protect human health and the environment, is not being altered. The more stringent 195 lbs/day VOC emission limit for the kilns should not lead to more pollution as alluded to by the commenter.

IV. Final Action

EPA is approving the Maryland SIP revision submitted on June 24, 2016, which requests incorporation by reference of a MDE order that includes an alternative VOC emission standard for NGC because the revision is in accordance with the Maryland SIP and meets the requirements in CAA section 110. This rule, which responds to the adverse comment received,

finalizes our proposed approval of Maryland's SIP submittal incorporating by reference MDE's order for NGC.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference Maryland's Department of the Environment Order No. 510-0233-6-0646 and -1569. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which approves Maryland's SIP revision incorporating by reference a MDE order establishing a VOC emission standard for NGC, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 1, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V—Maryland

2. In §52.1070, the table in paragraph (d) is amended by adding the entry “National Gypsum Company” at the end of the table to read as follows:

§52.1070 Identification of plan.

* * * * *

(d) EPA approved state source-specific requirements.

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
* * * * *				
National Gypsum Company (NGC)	Departmental Order	3/11/2016	<u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	The SIP approval includes specific alternative volatile organic compound emission limits and other conditions for NGC as established by the Departmental Order.

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[FR Doc. 2018-09889 Filed: 5/11/2018 8:45 am; Publication Date: 5/14/2018]